

C



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

C

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/224,376 12/31/98 HARVELL

J 709000

EXAMINER

021909
CARR & STORM, L.L.P.
900 JACKSON STREET
670 FOUNDERS SQUARE
DALLAS TX 75202

TM02/1005

CHANGE T	
ART UNIT	PAPER NUMBER

2154
DATE MAILED:

10/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

C

Office Action Summary

Application No.

09/224,376

Applicant(s)

HARVELL, JOSEPH C.

Examiner

Jungwon Chang

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 9-31 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

FINAL ACTION

1. This office action is responsive to the amendment filed on July 23, 2001. Claims 1-8 are canceled, and new claims 9-36 are presented for further examination.
2. Restriction to one of the following inventions is required under 35 U.S.C. § 121:
 - I. Claims 9-31 are drawn to method for associating domain name system resource records in a group, classified in Class 709, subclass 229.
 - II. Claims 32-36 are drawn to method for implementing a heartbeat protocol, classified in Class 709, subclass 224.
3. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as generating a heartbeat messages in accordance with the heartbeat protocol, this is a patentably distinct feature not found in invention I. See M.P.E.P § 806.05(d).
4. These inventions are distinct from the reasons given above, and the search required for each Group is different and not co-extensive for examination purpose.
5. For example, the searches for the two inventions would not be co-extensive because these groups would require different searches on PTO's classification class and subclass as following:

(a) the Group I search (claims 9-31) would require use of search Class 709, subclass 229 (not required for the invention II).

(b) the Group II search (claims 32-36) would require use of search Class 709, subclass 224 (not required for the invention I).

6. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructive elected by original presentation for prosecution on the merits. Accordingly, claims 9-31 are withdrawn from consideration as being directed to a non-elected invention. See 37 C.F.R. 35 § 1.142(b) and M.P.E.P § 821.03.

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in the prior office action.

8. Claims 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Feit (US 6,178,439).

9. As to claim 32, Feit disclose the invention substantially as claimed, including the method for implementing a heartbeat protocol, comprising generating heartbeat message by a single selected computer indicating the availability of resources on one or more computers (col. 3, lines 64-67; col. 4, lines 1-6), such that the presence of a heartbeat from the selected machine is indicative that all computer resources are available (col. 13, lines 46-67).

10. Feit does not specifically disclose loss of heartbeat from the selected computer is indicative that all computer resources are unavailable. However, Feit discloses heartbeat is ceased when the client left a web page (abstract, lines 11-12; col. 6, lines 10-13). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include Feit's heartbeat would improve the integrity and reliability by providing heartbeat message periodically to the server to identify when the client has finished using a particular record or how long the user viewed a particular record (col. 4, lines 18-27).

11. As to claims 33-34, Feit discloses the single selected computer requesting a new heartbeat rate, and upon agreement by the server to the new heartbeat, implementing the new heartbeat rate (col. 6, lines 44-67; col. 7, lines 55-65; col. 8, lines 7-9).

12. As to claim 35-36, Feit discloses generating a message by the selected computer in accordance with the heartbeat protocol (col. 9, lines 66-67; col. 10, lines 1-20).

13. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

Art Unit: 2154


CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jungwon Chang whose telephone number is (703)305-9669. The examiner can normally be reached on 9:00-5:30 (Monday-Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (703)308-9052. The fax phone numbers for the organization where this application or proceeding is assigned are (703)746-7239 for regular communications and (703)746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-3900.

Jungwon Chang
October 3, 2001


ZARNI MAUNG
PRIMARY EXAMINER